

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Central Valley Project, California

INTERIM RENEWAL CONTRACT BETWEEN THE UNITED STATES
AND
SACRAMENTO MUNICIPAL UTILITY DISTRICT
PROVIDING FOR PROJECT WATER SERVICE
FROM THE AMERICAN RIVER DIVISION

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10 THIS CONTRACT, made this _____ day of _____, 20____,
11 in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or
12 supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844),
13 as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented,
14 July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263),
15 October 27, 1986 (100 Stat. 3050), as amended, November 5, 1990 (104 Stat. 2074), and
16 Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively hereinafter referred
17 to as Federal Reclamation law, between the UNITED STATES OF AMERICA, hereinafter
18 referred to as the United States,, and the SACRAMENTO MUNICIPAL UTILITY DISTRICT,
19 hereinafter referred to as the Contractor, a public agency of the State of California, duly
20 organized, existing, and acting pursuant to the laws thereof;

21 WITNESSETH, That:

22 EXPLANATORY RECITALS

23 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
24 Project (Project), California, for diversion, storage, carriage, distribution and beneficial use, for

25 flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection
26 and restoration, generation and distribution of electric energy, salinity control, navigation and
27 other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River,
28 and the San Joaquin River and their tributaries; and

29 [2nd] WHEREAS, the United States constructed Folsom Dam and Reservoir,
30 hereinafter collectively referred to as the American River Division facilities, which will be used
31 in part for the furnishing of water to the Contractor pursuant to the terms of this Contract; and

32 [3rd] WHEREAS, the rights to Project Water were acquired by the United States
33 pursuant to California law for operation of the Project; and

34 [3.1] WHEREAS, on June 28, 1957, the City of Sacramento and the Contractor
35 executed an Agreement of Assignment in which the City of Sacramento granted to the Contractor
36 the right to divert up to 20 cubic feet per second for use in a thermal electric power generating
37 plant, from either the American or Sacramento Rivers, under rights held by the City of
38 Sacramento, hereinafter referred to as Assigned Water; and

39 [3.2] WHEREAS, the Contractor and the United States determined the Assigned Water
40 shall be conveyed under a separate Warren Act contract; and

41 [4th] WHEREAS, the Contractor and the United States entered into Contract
42 No. 14-06-200-5198A, dated November 20, 1970, hereinafter referred to as the Existing
43 Contract, which established terms for the delivery to the Contractor of a total of up to
44 75,000 acre-feet of water, including the Assigned Water, from the American River Division
45 through December 31, 2012; and

46 [4.1] WHEREAS, on July 12, 2006, the Contractor assigned to the Sacramento County
47 Water Agency the right, title, and interest in and to 30,000 acre-feet of Project Water under the
48 Existing Contract, including any rights to renew the Existing Contract; and

49 [5th] WHEREAS, the United States and the Contractor have subsequently entered into
50 a binding agreement, identified as Binding Agreement No. 14-06-200-5198A-BA, which sets out
51 the terms pursuant to which the Contractor agreed to renew the Existing Contract before its
52 expiration date after completion of a programmatic environmental impact statement (PEIS) and
53 other appropriate environmental documentation and negotiation of a renewal contract, and which
54 also sets out the consequences of a subsequent decision not to renew; and

55 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of
56 interim and existing long-term Central Valley Project Water service contracts following
57 completion of appropriate environmental documentation, including a programmatic
58 environmental impact statement (PEIS) pursuant to the National Environmental Policy Act
59 (NEPA) analyzing the direct and indirect impacts and benefits of implementing the CVPIA and
60 the potential renewal of all existing contracts for Project Water; and

61 [7th] Omitted; and

62 [8th] WHEREAS, the Contractor has requested the long-term renewal of the
63 Existing Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and
64 the laws of the State of California, for water service from the Project; and

65 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all
66 of its obligations under the Existing Contract; and

67 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the
68 Contracting Officer that the Contractor has utilized the Project Water supplies available to it for

69 reasonable and beneficial use and/or has demonstrated projected future demand for water use
70 such that the Contractor has the capability and expects to utilize fully for reasonable and beneficial
71 use the quantity of Project Water to be made available to it pursuant to this Contract; and

72 [11th] WHEREAS, water obtained from the Project has been relied upon by urban areas
73 within California for more than 50 years, and is considered by the Contractor as an essential
74 portion of its water supply; and

75 [12th] WHEREAS, the economies of regions within the Project, including the
76 Contractor's, depend upon the continued availability of water, including water service from the
77 Project; and

78 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and
79 partnerships to pursue measures to improve water supply, water quality, and reliability of the
80 Project for all Project purposes; and

81 [13.1] WHEREAS, the Contractor and the water users in its Service Area have improved
82 and will continue to improve water use efficiency through water conservation, water reclamation,
83 and other best management practices; however, implementing these measures have reduced and
84 continue to reduce the ability of the Contractor and the water users in its Service Area to
85 withstand a Condition of Shortage; and

86 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
87 provide for reliable Project Water supplies; to control costs of those supplies; to achieve
88 repayment of the Project as required by law; to guard reasonably against Project Water shortages;
89 to achieve a reasonable balance among competing demands for use of Project Water; and to
90 comply with all applicable environmental statutes, all consistent with the legal obligations of the
91 United States relative to the Project; and

92 [15th] WHEREAS, the parties intend by this Contract to develop a more cooperative
93 relationship in order to achieve their mutual goals; and

94 [15.1] WHEREAS, the Contractor is a signatory to the Water Forum Agreement, dated
95 April 2000, which has the co-equal objectives to (1) provide a reliable and safe water supply for
96 the Sacramento region's economic health and planned development through the year 2030, and
97 (2) preserve the fishery, wildlife, recreational and aesthetic values of the lower American River; and

98 [15.2] WHEREAS, the Contracting Officer is in support of the co-equal objectives of the
99 Water Forum Agreement and intends to work cooperatively with the Contractor to investigate
100 actions that they could take to implement the objectives of the Water Forum Agreement, which,
101 if agreed to, would be the subject of a separate agreement between them; and

102 [15.3] WHEREAS, in order to continue water service provided under Project water
103 service contracts that expire prior to the completion of all appropriate environmental
104 documentation, the United States intends to execute interim renewal contracts pursuant to
105 Section 3404(c)(1) of the CVPIA, for a period not to exceed three (3) years in length, and for
106 successive interim periods of not more than two (2) years in length, until such appropriate
107 environmental documentation, is finally completed, at which time the Secretary shall, pursuant to
108 Federal Reclamation law, upon request of the Contractor, enter into a long-term renewal contract
109 for a period of forty (40) years; and may thereafter renew such long-term renewal contracts for
110 successive periods not to exceed forty (40) years each; and

111 [16th] WHEREAS, the United States and the Contractor entered into a settlement
112 agreement dated March 3, 2005 for settlement of certain issues related to Project M&I ratesetting
113 and acknowledge that this Contract does not alter or amend the terms and conditions of that
114 agreement; and

115 [17th] WHEREAS, the United States and the Contractor agreed to develop a separate
116 agreement¹ by the execution date of this Contract, which reserves the rights of Contractor with
117 respect to certain legal and other concerns expressed by the Contractor during the negotiation of
118 the Contract. These concerns relate to the financial and certain other terms of the existing
119 Contract and whether the terms of this Contract should be revised to address those concerns; and

120 [18th] WHEREAS, the United States and the Contractor are willing to enter into and
121 execute this interim renewal Contract (hereinafter “Contract”) consistent with the provisions of
122 section 3404(c) of the CVPIA and pursuant to Federal Reclamation law on the terms and
123 conditions set forth below;

124 NOW, THEREFORE, in consideration of the mutual and dependent covenants
125 herein contained, it is hereby mutually agreed by the parties hereto as follows:

126 DEFINITIONS

127 1. When used herein unless otherwise distinctly expressed, or manifestly
128 incompatible with the intent of the parties as expressed in this Contract, the term:

129 (a) “Calendar Year” shall mean the period January 1 through December 31,
130 both dates inclusive;

131 (b) “Charges” shall mean the payments required by Federal Reclamation law
132 in addition to the Rates specified in this Contract as determined annually by the Contracting
133 Officer pursuant to this Contract;

134 (c) “Condition of Shortage” shall mean a condition respecting the Project
135 during any Year such that the Contracting Officer is unable to deliver sufficient water to meet the
136 Contract Total;

¹ The exact type and form of an agreement between the parties has yet to be determined

137 (d) "Contracting Officer" shall mean the Secretary of the Interior's duly
138 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law
139 or regulation;

140 (e) "Contract Total" shall mean the maximum amount of water to which the
141 Contractor is entitled under subdivision (a) of Article 3 of this Contract;

142 (f) "Contractor's Service Area" shall mean the area to which the Contractor is
143 permitted to provide Project Water obtained under this Contract as illustrated in Exhibit "A"
144 attached hereto, which may be modified from time to time in accordance with Article 35 of this
145 Contract without amendment of this Contract;

146 (g) "CVPIA" shall mean the Central Valley Project Improvement Act,
147 Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

148 (h-i) Omitted;

149 (j) "Full Cost Rate" shall mean an annual rate, as determined by the
150 Contracting Officer that shall amortize the expenditures for construction properly allocable to the
151 Project irrigation or M&I functions, as appropriate, of facilities in service including all O&M
152 deficits funded, less payments, over such periods as may be required under Federal Reclamation
153 law or applicable contract provisions. Interest will accrue on both the construction expenditures
154 and funded O&M deficits from October 12, 1982, on costs outstanding at that date, or from the
155 date incurred in the case of costs arising subsequent to October 12, 1982, and shall be calculated
156 in accordance with subsections 202(3)(B) and (3)(C) of the RRA. The Full-Cost Rate includes
157 actual operation, maintenance, and replacement costs consistent with Section 426.2 of the Rules
158 and Regulations for the RRA;

- 159 (k-1) Omitted;
- 160 (m) "Irrigation Water" shall mean water made available from the Project that is
161 used primarily in the production of agricultural crops or livestock, including domestic use
162 incidental thereto, and watering of livestock;
- 163 (n) Omitted;
- 164 (o) "Municipal and Industrial (M&I) Water" shall mean Project Water, other
165 than Irrigation Water, made available to the Contractor. M&I Water shall include water used for
166 human use and purposes such as the watering of landscaping or pasture for animals (e.g., horses)
167 which are kept for personal enjoyment or water delivered to land holdings operated in units of
168 less than five acres unless the Contractor establishes to the satisfaction of the Contracting Officer
169 that the use of water delivered to any such landholding is a use described in subdivision (m) of
170 this Article;
- 171 (p) "M&I Full Cost Water Rate" shall mean the Full Cost Rate applicable to
172 the delivery of M&I Water;
- 173 (q) "Operation and Maintenance" or "O&M" shall mean normal and
174 reasonable care, control, operation, repair, replacement (other than capital replacement), and
175 maintenance of Project facilities;
- 176 (r) Omitted;
- 177 (s) "Project" shall mean the Central Valley Project owned by the United
178 States and managed by the Department of the Interior, Bureau of Reclamation;
- 179 (t) "Project Contractors" shall mean all parties who have water service
180 contracts for Project Water from the Project with the United States pursuant to Federal
181 Reclamation law;

182 (u) "Project Water" shall mean all water that is developed, diverted, stored, or
183 delivered by the Secretary in accordance with the statutes authorizing the Project and in
184 accordance with the terms and conditions of water rights acquired pursuant to California law;

185 (v) "Rates" shall mean the payments determined annually by the Contracting
186 Officer in accordance with the then-current applicable water ratesetting policies for the Project,
187 as described in subdivision (a) of Article 7 of this Contract;

188 (w) "Recent Historic Average" shall mean the most recent five-year average of
189 the final forecast of Water Made Available to the Contractor pursuant to this Contract or its
190 preceding contract(s);

191 (x) "Secretary" shall mean the Secretary of the Interior, a duly appointed
192 successor, or an authorized representative acting pursuant to any authority of the Secretary and
193 through any agency of the Department of the Interior;

194 (y) Omitted;

195 (z) "Water Delivered" or "Delivered Water" shall mean Project Water
196 diverted for use by the Contractor at the point(s) of delivery approved by the Contracting Officer;

197 (aa) "Water Made Available" shall mean the estimated amount of Project
198 Water that can be delivered to the Contractor for the upcoming Year as declared by the
199 Contracting Officer, pursuant to subdivision (a) of Article 4 of this Contract;

200 (bb) "Water Scheduled" shall mean Project Water made available to the
201 Contractor for which times and quantities for delivery have been established by the Contractor
202 and Contracting Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

203 (cc) "Year" shall mean the period from and including March 1 of each
204 Calendar Year through the last day of February of the following Calendar Year.

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TERM OF CONTRACT

2. (a) This Contract shall be effective from January 1, 2013, and shall remain in effect through February 28, 2015, and thereafter will be renewed as described in the Article. Except as provided in subdivision (b) of this Article, until completion of all appropriate environmental review, and provided that the Contractor has complied with all the terms and conditions of the interim renewal contract in effect for the period immediately preceding the requested successive interim renewal contract, this Contract will be renewed, upon request of the Contractor, for successive interim periods each of which shall be no more than two (2) years in length. Also, except as provided in subdivision (b) of this Article, in order to promote orderly and cost effective contract administration, the terms and conditions in subsequent interim renewal contracts shall be identical to the terms and conditions in the interim renewal contract immediately preceding the subsequent interim renewal contract: *Provided, however,* That each party preserves the right to propose modification(s) in any interim renewal contract other than those described in subdivision (b) of this Article, in which case the parties shall negotiate in good faith appropriate modification(s) to be included in any successive interim renewal contracts. Said modification(s) of each successive interim renewal contract shall be agreed upon within a reasonable time prior to the expiration of the then-existing interim renewal contract. Nothing in this Article shall in any way alter the obligation that, upon final completion of any necessary supplemental environmental documentation, the Secretary shall, pursuant to Federal Reclamation law, upon request of the Contractor, enter into a long-term renewal contract for a period of forty (40) years and may thereafter renew such long-term renewal contracts for successive periods not to exceed forty (40) years each.

227 (b) The parties have engaged and if necessary will continue to engage in good
228 faith negotiations intended to permit the execution of a forty (40) year long-term renewal contract
229 contemplated by Section 3404(c) of the CVPIA, hereinafter referred to as a “long-term renewal
230 contract.” The parties recognize the possibility that this schedule may not be met without further
231 negotiations. Accordingly: In the event (i) the Contractor and Contracting Officer have reached
232 agreement on the terms of the Contractor’s long-term renewal contract or (ii) the Contractor and
233 Contracting Officer have not completed the negotiations on the Contractor’s long-term renewal
234 contract, believe that further negotiations on that contract would be beneficial, and mutually
235 commit to continue to negotiate to seek to reach agreement, but (iii) all environmental
236 documentation required to allow execution of the Contractor’s long-term renewal contract by
237 both parties has not been completed in time to allow execution of the Contractor’s long-term
238 renewal contract by February 28, 2015, then (iv) the parties will expeditiously complete the
239 environmental documentation required of each of them in order to execute the Contractor’s
240 long-term renewal contract at the earliest practicable date. In addition, the Contractor’s
241 then-current interim renewal contract will be renewed without change upon the request of either
242 party through the agreed-upon effective date of the Contractor’s long-term renewal contract or, in
243 the absence of agreement on the terms of the Contractor’s long-term renewal contract, through
244 the succeeding February 28.

245 (c) The omission of language in this Contract providing for conversion of this
246 interim renewal contract or any subsequent renewals thereof to a repayment contract pursuant to
247 subsection (c)(1) of Section 9 of the Reclamation Project Act of 1939 (53 Stat. 1187), shall not
248 prejudice the Contractor’s right to assert a right to have such language included in subsequent

249 renewals of this Contract or to exercise such conversion, all as provided by law, or to negotiate
250 the language regarding such conversion to be included in subsequent renewal contracts.

251 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

252 3. (a) During each Year, consistent with all applicable State water rights,
253 permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of
254 this Contract, the Contracting Officer shall make available for delivery to the Contractor up to
255 30,000 acre-feet of M&I water. Provided, however, during the two (2) month period of January
256 and February of 2013, the Contracting Officer shall make available for delivery to the Contractor
257 that portion of the 2012 allocation of Project Water unused by the Contractor under the Existing
258 Contract. The quantity of Water Delivered to the Contractor in accordance with this subdivision
259 shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

260 (b) Because the capacity of the Project to deliver Project Water has been
261 constrained in recent years and may be constrained in the future due to many factors including
262 hydrologic conditions and implementation of Federal and State laws, the likelihood of the
263 Contractor actually receiving the total amount of Project Water set out in subdivision (a) of this
264 Article in any given Year is uncertain. The Contracting Officer's modeling referenced in the
265 PEIS projected that the Contract Total set forth in this Contract will not be available to the
266 Contractor in many years. During the most recent five years, the Recent Historic Average of
267 Water Made Available to the Contractor was 28,500 acre-feet based on Existing Contract
268 minimum quantities. Nothing in subdivision (b) of this Article shall affect the rights and
269 obligations of the parties under any provision of this Contract.

270 (c) The Contractor shall utilize the Project Water in accordance with all
271 applicable legal requirements.

272 (d) The Contractor shall make reasonable and beneficial use of all water
273 furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu),
274 groundwater banking programs, surface water storage programs, and other similar programs
275 utilizing Project Water or other water furnished pursuant to this Contract conducted within the
276 Contractor's Service Area which are consistent with applicable State law and result in use
277 consistent with Federal Reclamation law will be allowed; *Provided*, That any direct recharge
278 program(s) is (are) described in the Contractor's water conservation plan submitted pursuant to
279 Article 26 of this Contract; *Provided, further*, That such water conservation plan demonstrates
280 sufficient lawful uses exist in the Contractor's Service Area to show reasonable and beneficial
281 use of the quantity of Delivered Water based on a long-term average in compliance with Federal
282 Reclamation law. Groundwater recharge programs, groundwater banking programs, surface
283 water storage programs, and other similar programs utilizing Project Water or other water
284 furnished pursuant to this Contract conducted outside the Contractor's Service Area may be
285 permitted upon written approval of the Contracting Officer, which approval will be based upon
286 environmental documentation, Project Water rights, and Project operational concerns. The
287 Contracting Officer will address such concerns in regulations, policies, or guidelines.

288 (e) The Contractor shall comply with requirements applicable to the
289 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution
290 of this Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA),
291 as amended, that are within the Contractor's legal authority to implement. The Existing
292 Contract, which evidences in excess of 40 years of diversions for M&I purposes of the quantities
293 of water provided in subdivision (a) of Article 3 of this Contract, will be considered in
294 developing an appropriate baseline for the biological assessment prepared pursuant to the ESA,

295 and any other needed environmental review. Nothing herein shall be construed to prevent the
296 Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with
297 respect to any biological opinion or other environmental documentation referred to in this Article.

298 (f) Following the declaration of Water Made Available under Article 4 of this
299 Contract, the Contracting Officer will make a determination whether Project Water or other
300 water available to the Project, can be made available to the Contractor in addition to the Contract
301 Total under Article 3 of this Contract during the Year without adversely impacting other Project
302 Contractors. At the request of the Contractor, the Contracting Officer will consult with the
303 Contractor prior to making such a determination. If the Contracting Officer determines that
304 Project Water, or other water available to the Project, can be made available to the Contractor,
305 the Contracting Officer will announce the availability of such water and shall so notify the
306 Contractor as soon as practical. The Contracting Officer will thereafter meet with the Contractor
307 and other Project Contractors capable of taking such water to determine the most equitable and
308 efficient allocation of such water. If the Contractor requests the delivery of any quantity of such
309 water, the Contracting Officer shall make such water available to the Contractor in accordance
310 with applicable statutes, regulations, guidelines, and policies.

311 (g) The Contractor may request permission to reschedule for use during the
312 subsequent Year some or all of the Water Made Available to the Contractor during the current
313 Year referred to as “carryover.” The Contractor may request permission to use during the current
314 Year a quantity of Project Water which may be made available by the United States to the
315 Contractor during the subsequent Year referred to as “preuse.” The Contracting Officer’s written
316 approval may permit such uses in accordance with applicable statutes, regulations, guidelines,
317 and policies.

318 (h) The Contractor's right pursuant to Federal Reclamation law and applicable
319 State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract
320 during the term thereof and any subsequent renewal contracts, as described in Article 2 of this
321 Contract, during the terms thereof shall not be disturbed so long as the Contractor shall fulfill all
322 of its obligations under this Contract and any renewals thereof. Nothing in the preceding sentence
323 shall affect the Contracting Officer's ability to impose shortages under Article 11 or subdivision (b)
324 of Article 12 of this Contract or applicable provisions of any subsequent renewal contracts.

325 (i) Project Water furnished to the Contractor pursuant to this Contract may be
326 delivered for purposes other than those described in subdivision (o) of Article 1 of this Contract
327 upon written approval by the Contracting Officer in accordance with the terms and conditions of
328 such approval.

329 (j) The Contracting Officer shall make reasonable efforts to protect the water
330 rights necessary for the Project and to provide the Water Made Available under this Contract.
331 The Contracting Officer shall not object to participation by the Contractor, in the capacity and to
332 the extent permitted by law, in administrative proceedings related to the Project Water rights;
333 *Provided, however,* That the Contracting Officer retains the right to object to the substance of the
334 Contractor's position in such a proceeding; *Provided further,* That in such proceedings the
335 Contracting Officer shall recognize the Contractor has a legal right under the terms of this
336 Contract to use Project Water.

337 (k) The delivery of Project Water to, and use of Project Water at, any electric
338 power generating facility within the Contractor's Service Area (i) from which the Contractor
339 purchases all of the electricity produced by such facility and (ii) which is owned by a joint

340 powers authority or other entity controlled by the Contractor, shall be deemed to be a delivery of
341 Project Water to, and use of such water by, the Contractor pursuant to this Contract.

342 TIME FOR DELIVERY OF WATER

343 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer
344 shall announce the Contracting Officer's expected declaration of the Water Made Available.
345 Such declaration will be expressed in terms of both Water Made Available and the Recent
346 Historic Average and will be updated monthly, and more frequently if necessary, based on
347 then-current operational and hydrologic conditions and a new declaration with changes, if any, to
348 the Water Made Available will be made. The Contracting Officer shall provide forecasts of
349 Project operations and the basis of the estimate, with relevant supporting information, upon the
350 written request of the Contractor. Concurrently with the declaration of the Water Made
351 Available, the Contracting Officer shall provide the Contractor with the updated Recent
352 Historic Average.

353 (b) On or before each March 1 and at such other times as necessary, the
354 Contractor shall submit to the Contracting Officer a written schedule, satisfactory to the
355 Contracting Officer, showing the monthly quantities of Project Water to be delivered by the
356 United States to the Contractor pursuant to this Contract for the Year commencing on such
357 March 1. The Contracting Officer shall use all reasonable means to deliver Project Water
358 according to the approved schedule for the Year commencing on such March 1.

359 (c) The Contractor shall not schedule Project Water in excess of the quantity
360 of Project Water the Contractor intends to put to reasonable and beneficial use within the
361 Contractor's Service Area or to sell, transfer or exchange pursuant to Article 9 of this Contract
362 during any Year.

363 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this
364 Contract, the United States shall deliver Project Water to the Contractor in accordance with the
365 initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any
366 written revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable
367 time prior to the date(s) on which the requested change(s) is/are to be implemented.

368 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

369 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
370 Contract shall be delivered to the Contractor at: (i) the turnout at milepost 24.681 (left side) on
371 the Folsom-South Canal located at a point 700 feet upstream from the inlet transition of the
372 Laguna Creek siphon, and (ii) any additional point or points of delivery either on Project
373 facilities or another location or locations mutually agreed to in writing by the Contracting Officer
374 and the Contractor.

375 (b) The Contracting Officer shall make all reasonable efforts to maintain
376 sufficient flows and levels of water in the Folsom-South Canal to deliver Project Water to the
377 Contractor at specific turnouts established pursuant to subdivision (a) of this Article.

378 (c) The Contractor shall not deliver Project Water to land outside the
379 Contractor's Service Area unless approved in advance by the Contracting Officer.

380 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
381 measured and recorded with equipment furnished, installed, operated, and maintained by the
382 United States, or other appropriate entity as designated by the Contracting Officer at the point or
383 points of delivery established pursuant to subdivision (a) of this Article; *Provided*, That if the
384 Project Water delivered pursuant to this Contract is diverted at a location or in a manner so as to
385 be commingled with water diverted by any other entity, the point of measurement for Project

386 Water delivered to the Contractor shall be a location at which Project Water diverted for
387 Contractor's use can be measured separately from water diverted by any such entity or entities.
388 Upon the request of either party to this Contract, the Contracting Officer shall investigate, or
389 cause to be investigated, the accuracy of such measurements and shall take any necessary steps to
390 adjust any errors appearing therein. For any period of time when accurate measurements have
391 not been made, the Contracting Officer shall consult with the Contractor prior to making a final
392 determination of the quantity delivered for that period of time.

393 (e) The Contracting Officer shall not be responsible for the control, carriage,
394 handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this
395 Contract beyond the delivery points specified in subdivision (a) of this Article. The Contractor
396 shall indemnify the United States, its officers, employees, agents, and assigns on account of
397 damage or claim of damage of any nature whatsoever for which there is legal responsibility,
398 including property damage, personal injury, or death arising out of or connected with the control,
399 carriage, handling, use, disposal, or distribution of such Water Delivered beyond such delivery
400 points, except for any damage or claim arising out of: (i) acts or omissions of the Contracting
401 Officer or any of its officers, employees, agents, or assigns with the intent of creating the
402 situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or
403 any of its officers, employees, agents, or assigns; (iii) negligence of the Contracting Officer or
404 any of its officers, employees, agents, or assigns; or (iv) damage or claims resulting from a
405 malfunction of facilities owned and/or operated by the United States.

406 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

407 6. (a) The Contractor shall ensure that, unless the Contractor establishes an
408 alternative measurement program satisfactory to the Contracting Officer, all surface water

409 delivered by the Contractor within the Contractor's Service Area for M&I purposes is measured
410 at each M&I service connection. The water measuring devices or water measuring methods of
411 comparable effectiveness must be acceptable to the Contracting Officer. The Contractor shall be
412 responsible for installing, operating, and maintaining and repairing all such measuring devices
413 and implementing all such water measuring methods at no cost to the United States. The
414 Contractor shall use the information obtained from such water measuring devices or water
415 measuring methods to ensure its proper management of the water, to bill water users for water
416 delivered by the Contractor; and, if applicable, to record water delivered for M&I purposes by
417 customer class as defined in the Contractor's water conservation plan provided for in Article 26
418 of this Contract. Nothing herein contained, however, shall preclude the Contractor from
419 establishing and collecting any charges, assessments, or other revenues authorized by California
420 law. The Contractor shall include a summary of all its annual surface water deliveries in the
421 annual report described in subdivision (c) of Article 26.

422 (b) To the extent the information has not otherwise been provided, upon
423 execution of this Contract, the Contractor shall provide to the Contracting Officer a written
424 report describing the measurement devices or water measuring methods being used or to be used
425 to implement subdivision (a) of this Article and identifying the M&I service connections or
426 alternative measurement programs approved by the Contracting Officer, at which such
427 measurement devices or water measuring methods are being used, and, if applicable, identifying
428 the locations at which such devices and/or methods are not yet being used including a time
429 schedule for implementation at such locations. The Contracting Officer shall advise the
430 Contractor in writing within 60 days as to the adequacy and necessary modifications, if any, of
431 the measuring devices or water measuring methods identified in the Contractor's report and if the

432 Contracting Officer does not respond in such time, they shall be deemed adequate. If the
433 Contracting Officer notifies the Contractor that the measuring devices or methods are inadequate,
434 the parties shall within 60 days following the Contracting Officer's response, commence to
435 negotiate in good faith how, and the earliest practicable date by which, the Contractor shall
436 modify said measuring devices and/or measuring methods as required by the Contracting Officer
437 to ensure compliance with subdivision (a) of this Article.

438 (c) All new surface water delivery systems for the delivery of Project Water
439 under this Contract installed within the Contractor's Service Area after the effective date of this
440 Contract, shall also comply with the measurement provisions described in subdivision (a) of
441 this Article.

442 (d) The Contractor shall inform the Contracting Officer and the State of
443 California in writing by April 30 of each Year of the monthly volume of surface water delivered
444 by the Contractor within the Contractor's Service Area during the previous Year.

445 (e) The Contractor shall inform the Contracting Officer on or before the 20th
446 calendar day of each month of the quantity of Project Water taken during the previous month.

447 RATES AND METHOD OF PAYMENT FOR WATER

448 7. (a) The Contractor shall pay the United States as provided in this Article for
449 all Delivered Water at Rates and Charges established in accordance with: (i) the Secretary's
450 then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be amended,
451 modified, or superseded only through a public notice and comment procedure; (ii) applicable
452 Federal Reclamation law and associated rules and regulations, or policies; and (iii) other
453 applicable provisions of this Contract. Payments shall be made by cash transaction, electronic
454 funds transfer, or any other mechanism as may be agreed to in writing by the Contractor and the

455 Contracting Officer. The Rates and Charges applicable to the Contractor upon execution of this
456 Contract are set forth in Exhibit "B", as may be revised annually.

457 (b) The Contracting Officer shall notify the Contractor of the Rates and
458 Charges as follows:

459 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
460 provide the Contractor an estimate of the Charges for Project Water that will be applied
461 to the period October 1, of the current Calendar Year, through September 30, of the
462 following Calendar Year, and the basis for such estimate. The Contractor shall be
463 allowed not less than two months to review and comment on such estimates. On or
464 before September 15 of each Calendar Year, the Contracting Officer shall notify the
465 Contractor in writing of the Charges to be in effect during the period October 1 of the
466 current Calendar Year, through September 30, of the following Calendar Year, and such
467 notification shall revise Exhibit "B".

468 (2) Prior to October 1 of each Calendar Year, the Contracting Officer
469 shall make available to the Contractor an estimate of the Rates for Project Water, for the
470 following Year and the computations and cost allocations upon which those Rates are
471 based. The Contractor shall be allowed not less than two months to review and comment
472 on such computations and cost allocations. By December 31 of each Calendar Year, the
473 Contracting Officer shall provide the Contractor with the final Rates to be in effect for the
474 upcoming Year, and such notification shall revise Exhibit "B".

475 (c) At the time the Contractor submits the initial schedule for the delivery of
476 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the
477 Contractor shall make an advance payment to the United States equal to the total amount payable

478 pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water
479 scheduled to be delivered pursuant to this Contract during the first two calendar months of the
480 Year. Before the end of the first month and before the end of each calendar month thereafter, the
481 Contractor shall make an advance payment to the United States, at the Rate(s) set under
482 subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to this Contract
483 during the second month immediately following. Adjustments between advance payments for
484 Water Scheduled and payments at Rates due for Water Delivered shall be made before the end of
485 the following month; *Provided*, That any revised schedule submitted by the Contractor pursuant
486 to Article 4 of this Contract which increases the amount of Water Delivered pursuant to this
487 Contract during any month shall be accompanied with appropriate advance payment, at the Rates
488 then in effect, to assure that Project Water is not delivered to the Contractor in advance of such
489 payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to
490 this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no
491 additional Project Water shall be delivered to the Contractor unless and until an advance payment
492 at the Rates then in effect for such additional Project Water is made. Final adjustment between
493 the advance payments for the Water Scheduled and payments for the quantities of Water
494 Delivered during each Year pursuant to this Contract shall be made as soon as practicable, but no
495 later than April 30th of the following Year, or 60 days after the delivery of Project Water carried
496 over under subdivision (g) of Article 3 of this Contract if such water is not delivered by the last
497 day of February.

498 (d) The Contractor shall also make a payment in addition to the Rate(s) in
499 subdivision (c) of this Article to the United States for Project Water delivered, at the Charges
500 then in effect, before the end of the month following the month of delivery. The payments shall

501 be consistent with the quantities of Project Water delivered as shown in the water delivery report
502 for the subject month prepared by the Contracting Officer. The water delivery report shall be
503 deemed a bill for the payment of Charges for Project Water delivered. Adjustment for
504 overpayment or underpayment of Charges shall be made through the adjustment of payments due
505 to the United States for Charges for the next month. Any amount to be paid for past due payment
506 of Charges shall be computed pursuant to Article 20 of this Contract.

507 (e) The Contractor shall pay for any Water Delivered under subdivision (a),
508 (f), or (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to
509 applicable statutes, associated regulations, any applicable provisions of guidelines or ratesetting
510 policies; *Provided*, That the Rate for Water Delivered under subdivision (f) of Article 3 of this
511 Contract shall be no more than the otherwise applicable Rate for M&I Water under subdivision (a)
512 of this Article.

513 (f) Payments to be made by the Contractor to the United States under this
514 Contract may be paid from any revenues available to the Contractor.

515 (g) All revenues received by the United States from the Contractor relating to
516 the delivery of Project Water, through Project facilities shall be allocated and applied in
517 accordance with Federal Reclamation law and the associated rules or regulations, and the
518 then-current Project ratesetting policy for M&I Water.

519 (h) The Contracting Officer shall keep its accounts pertaining to the
520 administration of the financial terms and conditions of its long-term contracts, in accordance with
521 applicable Federal standards, so as to reflect the application of Project costs and revenues. The
522 Contracting Officer shall, each Year upon request of the Contractor, provide to the Contractor a
523 detailed accounting of all Project and Contractor expense allocations, the disposition of all

524 Project and Contractor revenues, and a summary of all water delivery information. The
525 Contracting Officer and the Contractor shall enter into good faith negotiations to resolve any
526 discrepancies or disputes relating to accountings, reports, or information.

527 (i) The parties acknowledge and agree that the efficient administration of this
528 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,
529 policies, and procedures used for establishing Rates and Charges, and/or for making and
530 allocating payments, other than those set forth in this Article may be in the mutual best interest of
531 the parties, it is expressly agreed that the parties may enter into agreements to modify the
532 mechanisms, policies, and procedures for any of those purposes while this Contract is in effect
533 without amending this Contract.

534 (j) Omitted.

535 (k) For the term of this Contract, Rates under the respective ratesetting
536 policies will be established to recover only reimbursable O&M (including any deficits) and
537 capital costs of the Project, as those terms are used in the then-current Project ratesetting policies,
538 and interest, where appropriate, except in instances where a minimum Rate is applicable in
539 accordance with the relevant Project ratesetting policy. Changes of significance in practices
540 which implement the Contracting Officer's ratesetting policies will not be implemented until the
541 Contracting Officer has provided the Contractor an opportunity to discuss the nature, need, and
542 impact of the proposed change.

543 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the
544 CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates
545 adjusted upward or downward in accordance with the then-applicable Project ratesetting policy to

546 reflect the changed costs, if any, incurred by the Contracting Officer in the delivery of the
547 transferred Project Water to the transferee's point of delivery.

548 (m) Omitted.

549 (n) Omitted.

550 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

551 8. Omitted.

552 SALES, TRANSFERS, OR EXCHANGES OF WATER

553 9. (a) The right to receive Project Water provided for in this Contract may be
554 sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of
555 California if such sale, transfer, or exchange is authorized by applicable Federal and State laws,
556 and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project
557 Water under this Contract may take place without the prior written approval of the Contracting
558 Officer, except as provided for in subdivision (b) of this Article, and no such sales, transfers, or
559 exchanges shall be approved absent all appropriate environmental documentation, including but
560 not limited to documents prepared pursuant to the NEPA and the ESA. Such environmental
561 documentation should include, as appropriate, an analysis of groundwater impacts and economic
562 and social effects, including environmental justice, of the proposed water transfers on both the
563 transferor and transferee.

564 (b) In order to facilitate efficient water management, among Project
565 Contractors located within the same geographical area, by means of water transfers and to allow
566 the Contractor to participate in an accelerated water transfer program during the term of this
567 Contract, the Contracting Officer shall prepare, as appropriate, all necessary environmental
568 documentation including, but not limited to, documents prepared pursuant to the NEPA and the

569 ESA analyzing annual transfers within such geographical areas and the Contracting Officer shall
570 determine whether such transfers comply with applicable law. Following the completion of the
571 environmental documentation, such transfers addressed in such documentation shall be
572 conducted with advance notice to the Contracting Officer, but shall not require prior written
573 approval by the Contracting Officer. Such environmental documentation and the Contracting
574 Officer's compliance determination shall be reviewed every five years and updated, as necessary,
575 prior to the expiration of the then-existing five year period. All subsequent environmental
576 documentation shall include an alternative to evaluate not less than the quantity of Project Water
577 historically transferred within the same geographical area.

578 (c) For a water transfer to qualify under subdivision (b) of this Article, such
579 water transfer must: (i) be for irrigation purposes for lands irrigated within the previous three
580 years, or to be delivered to established wildlife refuges, groundwater basins or for M&I use or for
581 fish and wildlife purposes; (ii) occur within a single Year; (iii) occur between a willing seller
582 and a willing buyer; (iv) convey water through existing Project facilities with no new
583 construction or modifications to Project facilities and be between existing Project Contractors
584 and/or the Contractor and the United States, Department of the Interior; and (v) comply with all
585 applicable Federal, State, and local or tribal laws and requirements imposed for protection of the
586 environment and Indian Trust Assets, as defined under Federal law. Such water transfers must
587 not lead to land conversion.

588 (d) Solely for the purpose of determining whether Section 3405(a)(1)(M) of
589 the CVPIA applies to the Contractor as a transferor or transferee of Project Water, the
590 Contracting Officer acknowledges that the Contractor is within a county, watershed or other area
591 of origin, as those terms are utilized under California law, of water that constitutes the natural

592 flow of the American River and its tributaries above the confluence of the American and
593 Sacramento Rivers.

594 APPLICATION OF PAYMENTS AND ADJUSTMENTS

595 10. (a) The amount of any overpayment by the Contractor of the Contractor's
596 O&M, capital, and deficit (if any) obligations for the Year shall be applied first to any current
597 liabilities of the Contractor arising out of this Contract then due and payable. Overpayments of
598 more than \$1,000 shall be refunded at the Contractor's request. In lieu of a refund, any amount
599 of such overpayment at the option of the Contractor, may be credited against amounts to become
600 due to the United States by the Contractor. With respect to overpayment, such refund or
601 adjustment shall constitute the sole remedy of the Contractor or anyone having or claiming to
602 have the right to the use of any of the Project Water supply provided for herein. All credits and
603 refunds of overpayments shall be made within 30 days of the Contracting Officer obtaining
604 direction as to how to credit or refund such overpayment in response to the notice to the
605 Contractor that it has finalized the accounts for the Year in which the overpayment was made.

606 (b) All advances for miscellaneous costs incurred for work requested by the
607 Contractor pursuant to Article 25 of this Contract shall be adjusted to reflect the actual costs
608 when the work has been completed. If the advances exceed the actual costs incurred, the
609 difference will be refunded to the Contractor. If the actual costs exceed the Contractor's
610 advances, the Contractor will be billed for the additional costs pursuant to Article 25.

611 TEMPORARY REDUCTIONS—RETURN FLOWS

612 11. (a) Subject to: (i) the authorized purposes and priorities of the Project and the
613 requirements of Federal law and (ii) the obligations of the United States under existing contracts,
614 or renewals thereof, providing for water deliveries from the Project, the Contracting Officer shall

615 make all reasonable efforts to optimize Project Water deliveries to the Contractor as provided in
616 this Contract.

617 (b) The Contracting Officer may temporarily discontinue or reduce the
618 quantity of Water Delivered to the Contractor as herein provided for the purposes of
619 investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or
620 any part thereof necessary for the delivery of Project Water to the Contractor, but so far as
621 feasible the Contracting Officer will give the Contractor due notice in advance of such temporary
622 discontinuance or reduction, except in case of emergency, in which case no notice need be given;
623 *Provided*, That the United States shall use its best efforts to avoid any discontinuance or reduction
624 in such service. Upon resumption of service after such reduction or discontinuance, and if
625 requested by the Contractor, the United States will, if possible, deliver the quantity of Project Water
626 which would have been delivered hereunder in the absence of such discontinuance or reduction.

627 (c) The United States reserves the right to all seepage and return flow water
628 derived from Project Water delivered to the Contractor hereunder which escapes or is discharged
629 beyond the Contractor's Service Area; *Provided*, That this shall not be construed as claiming for
630 the United States any right to seepage or return flow being put to reasonable and beneficial use
631 pursuant to this Contract within the Contractor's Service Area by the Contractor or those
632 claiming by, through, or under the Contractor.

633 CONSTRAINTS ON THE AVAILABILITY OF WATER

634 12. a) In its operation of the Project, the Contracting Officer will use all
635 reasonable means to guard against a Condition of Shortage in the quantity of water to be made
636 available to the Contractor pursuant to this Contract. In the event the Contracting Officer
637 determines that a Condition of Shortage appears probable, the Contracting Officer will notify the
638 Contractor of said determination as soon as practicable.

639 (b) If there is a Condition of Shortage because of errors in physical operations
640 of the Project, drought, other physical causes beyond the control of the Contracting Officer or
641 actions taken by the Contracting Officer to meet current and future legal obligations then, except
642 as provided in subdivision (a) of Article 18 of this Contract, no liability shall accrue against the
643 United States or any of its officers, agents, or employees for any damage, direct or indirect,
644 arising therefrom.

645 (c) Omitted.

646 (d) Project Water furnished under this Contract will be allocated in
647 accordance with the then-existing Project M&I Water Shortage Policy; *Provided*, That any
648 increases in the Contractor's demand that have arisen since the delivery of Project Water to the
649 Contractor the previous year, which are the result of Contractor providing additional water to an
650 electrical power generating plant (including a cogeneration plant), shall, in addition to any other
651 applicable adjustments pursuant to the policy, result in a corresponding increase in the
652 Contractor's "historic use" quantity. Such policy shall be amended, modified, or superseded only
653 through a public notice and comment procedure.

654 (e) By entering into this Contract, the Contractor does not waive any legal
655 rights or remedies it may have to file or participate in any administrative or judicial proceeding
656 contesting (i) the sufficiency of the manner in which any Project M&I Water Shortage Policy
657 adopted after the effective date of this Contract was promulgated; (ii) the substance of such a
658 policy; or (iii) the applicability of such a policy. By agreeing to the foregoing, the Contracting
659 Officer does not waive any legal defenses or remedies that it may then have to assert in such
660 a proceeding.

661 UNAVOIDABLE GROUNDWATER PERCOLATION

662 13. Omitted.

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RULES AND REGULATIONS

14. The parties agree that the delivery of Project Water, or use of Federal facilities pursuant to this Contract, is subject to the applicable provisions of Federal Reclamation law; and any applicable rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation law.

PROTECTION OF WATER AND AIR QUALITY

15. (a) Project facilities used to make available and deliver water to the Contractor shall be operated and maintained in the most practical manner to maintain the quality of the water at the highest level possible as determined by the Contracting Officer: *Provided*, That the United States does not warrant the quality of the water delivered to the Contractor and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the Contractor.

(b) The Contractor shall comply with all applicable water and air pollution laws and regulations of the United States and the State of California; and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of water by the Contractor; and shall be responsible for compliance with all Federal, State and local water quality standards applicable to surface and subsurface drainage and/or discharges generated through the use of Federal or Contractor facilities or project water provided by the Contractor within the Contractor's Project Water Service Area.

(c) Any new, additional or proposed water to be introduced into the facility by existing or future Project contractors may be allowed to the extent such introduction does not: (i) interfere with Project purposes as determined by the Contracting Officer; (ii) reduce the quantity or quality of water to the extent that such a reduction would significantly affect the use of water, or the cost of putting such water to use, by Project contractors as reasonably determined by the Contracting Officer, following consultation with the affected contractor; (iii) interfere with delivery of contractual water entitlements to any other Project Contractors; or (iv) interfere with structural integrity, operation or physical maintenance of Project facilities.

(d) This article shall not affect or alter any legal obligations of the Secretary to provide drainage or other discharge services.

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QUALITY OF WATER

16. Combined with Article 15.

WATER ACQUIRED BY THE CONTRACTOR OTHER THAN
FROM THE UNITED STATES

17. (a) Omitted.

(b) Except for, water or water rights now owned or hereafter acquired by the

Contractor, other than from the United States may be stored, conveyed and/or diverted through Project facilities, subject to the completion of appropriate environmental documentation, with the approval of the Contracting Officer and the execution of any contract determined by the Contracting Officer to be necessary, consistent with the following provisions:

(1) The Contractor may introduce non-Project water into Project facilities and deliver said water to lands within the Contractor’s Service Area, subject to payment to the United States of an appropriate rate as determined by the applicable Project ratesetting policy and the Project use power policy, if such Project use power policy is applicable, each as amended, modified or superseded from time to time.

(2) Delivery of such non-Project water in and through Project facilities shall only be allowed to the extent such deliveries do not: (i) interfere with other Project purposes as determined by the Contracting Officer; (ii) reduce the quantity or quality of water available to other Project Contractors; (iii) interfere with the delivery of contractual water entitlements to any other Project Contractors; or (iv) interfere with the physical maintenance of the Project facilities.

(3) The United States shall not be responsible for control, care or distribution of the non-Project water before it is introduced into or after it is delivered

715 from the Project facilities. The Contractor hereby releases and agrees to defend and
716 indemnify the United States and their respective officers, agents, and employees, from
717 any claim for damage to persons or property, direct or indirect, resulting from the acts of
718 the Contractor, its officers, employees, agents or assigns of (i) extracting or diverting
719 non-Project water from any source, or (ii) diverting such non-Project water into
720 Project facilities.

721 (4) Diversion of such non-Project water into Project facilities shall be
722 consistent with all applicable laws, and if involving groundwater, consistent with any
723 applicable groundwater management plan applicable to the Contractor for the area from
724 which it was extracted.

725 (5) After Project purposes are met, as determined by the Contracting
726 Officer, the United States and the Contractor shall share priority to utilize the remaining
727 capacity of the facilities declared to be available by the Contracting Officer for
728 conveyance and transportation of non-Project water prior to any such remaining capacity
729 being made available to non-Project Contractors.

730 OPINIONS AND DETERMINATIONS

731 18. (a) Where the terms of this Contract provide for actions to be based upon the
732 opinion or determination of either party to this Contract, said terms shall not be construed as
733 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
734 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly
735 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,
736 or unreasonable opinion or determination. Each opinion or determination by either party shall be
737 provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is intended

738 to or shall affect or alter the standard of judicial review applicable under Federal law to any opinion
739 or determination implementing a specific provision of federal law embodied in statute or regulation.

740 (b) The Contracting Officer shall have the right to make determinations
741 necessary to administer this Contract that are consistent with the provisions of this Contract, the
742 laws of the United States and of the State of California, and the rules and regulations
743 promulgated by the Secretary of the Interior. Such determinations shall be made in consultation
744 with the Contractor to the extent reasonably practicable.

745 COORDINATION AND COOPERATION

746 19. (a) In order to further their mutual goals and objectives, the Contracting
747 Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and
748 with other affected Project Contractors, in order to improve the operation and management of the
749 Project. The communication, coordination, and cooperation regarding operations and
750 management shall include, but not be limited to, any action which will or may materially affect
751 the quantity or quality of Project Water supply, the allocation of Project Water supply, and
752 Project financial matters including, but not limited to, budget issues. The communication,
753 coordination, and cooperation provided for hereunder shall extend to all provisions of this
754 Contract. Each party shall retain exclusive decision making authority for all actions, opinion,
755 and determinations to be made by the respective party.

756 (b) Within 120 days following the effective date of this Contract, the
757 Contractor, other affected Project Contractors, and the Contracting Officer shall arrange to meet
758 with interested Project Contractors to develop a mutually agreeable, written Project-wide
759 process, which may be amended as necessary separate and apart from this Contract. The goal of
760 this process shall be to provide, to the extent practicable, the means of mutual communication

761 and interaction regarding significant decisions concerning Project operation and management on
762 a real-time basis.

763 (c) In light of the factors referred to in subdivision (b) of Article 3 of this
764 Contract, it is the intent of the Secretary to improve water supply reliability. To carry out
765 this intent:

766 (1) The Contracting Officer will, at the request of the Contractor, assist
767 in the development of integrated resource management plans for the Contractor. Further,
768 the Contracting Officer will, as appropriate, seek authorizations for implementation of
769 partnerships to improve water supply, water quality, and reliability.

770 (2) The Secretary will, as appropriate, pursue program and project
771 implementation and authorization in coordination with Project Contractors to improve the
772 water supply, water quality, and reliability of the Project for all Project purposes.

773 (3) The Secretary will coordinate with Project Contractors and the
774 State of California to seek improved water resource management.

775 (4) The Secretary will coordinate actions of agencies within the
776 Department of the Interior that may impact the availability of water for Project purposes.

777 (5) The Contracting Officer shall periodically, but not less than
778 annually, hold division level meetings to discuss Project operations, division level water
779 management activities, and other issues as appropriate.

780 (d) Without limiting the contractual obligations of the Contracting Officer
781 under the other Articles of this Contract, nothing in this Article shall be construed to limit or
782 constrain the Contracting Officer's ability to communicate, coordinate, and cooperate with the

783 Contractor or other interested stakeholders or to make decisions in a timely fashion as needed to
784 protect health, safety, or the physical integrity of structures or facilities.

785 CHARGES FOR DELINQUENT PAYMENTS

786 20. (a) The Contractor shall be subject to interest, administrative, and penalty
787 charges on delinquent payments. If a payment is not received by the due date, the Contractor
788 shall pay an interest charge on the delinquent payment for each day the payment is delinquent
789 beyond the due date. If a payment becomes 60 days delinquent, the Contractor shall pay, in
790 addition to the interest charge, an administrative charge to cover additional costs of billing and
791 processing the delinquent payment. If a payment is delinquent 90 days or more, the Contractor
792 shall pay, in addition to the interest and administrative charges, a penalty charge for each day the
793 payment is delinquent beyond the due date, based on the remaining balance of the payment due at
794 the rate of 6 percent per year. The Contractor shall also pay any fees incurred for debt collection
795 services associated with a delinquent payment.

796 (b) The interest rate charged shall be the greater of either the rate prescribed
797 quarterly in the Federal Register by the Department of the Treasury for application to overdue
798 payments, or the interest rate of 0.5 percent per month. The interest rate charged will be
799 determined as of the due date and remain fixed for the duration of the delinquent period.

800 (c) When a partial payment on a delinquent account is received, the amount
801 received shall be applied first to the penalty charges, second to the administrative charges, third
802 to the accrued interest, and finally to the overdue payment.

803 EQUAL OPPORTUNITY

804 21. During the performance of this Contract, the Contractor agrees as follows:

805 (a) The Contractor will not discriminate against any employee or applicant for
806 employment because of race, color, religion, sex, disability, or national origin. The Contractor
807 will take affirmative action to ensure that applicants are employed, and that employees are treated
808 during employment, without regard to their race, color, religion, sex, disability, or national
809 origin. Such action shall include, but not be limited to the following: employment, upgrading,
810 demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay
811 or other forms of compensation; and selection for training, including apprenticeship. The
812 Contractor agrees to post in conspicuous places, available to employees and applicants for

813 employment, notices to be provided by the Contracting Officer setting forth the provisions of this
814 nondiscrimination clause.

815 (b) The Contractor will, in all solicitations or advertisements for employees
816 placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration
817 for employment without regard to race, color, religion, sex, disability, or national origin.

818 (c) The Contractor will send to each labor union or representative of workers
819 with which it has a collective bargaining agreement or other contract or understanding, a notice,
820 to be provided by the Contracting Officer, advising the labor union or workers' representative
821 of the Contractor's commitments under section 202 of Executive Order 11246 of
822 September 24, 1965 (EO 11246), and shall post copies of the notice in conspicuous places
823 available to employees and applicants for employment.

824 (d) The Contractor will comply with all provisions of EO 11246, and of the
825 rules, regulations, and relevant orders of the Secretary of Labor.

826 (e) The Contractor will furnish all information and reports required by
827 EO 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant
828 thereto, and will permit access to his books, records, and accounts by the Contracting Agency
829 and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules,
830 regulations, and orders.

831 (f) In the event of the Contractor's noncompliance with the nondiscrimination
832 clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be
833 canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible
834 for further Government contracts in accordance with procedures authorized in EO 11246, and such
835 other sanctions may be imposed and remedies invoked as provided in EO 11246 or by rule,
836 regulation, or order of the Secretary of Labor, or as otherwise provided by law.

837 (g) The Contractor will include the provisions of paragraphs (a) through (g) in
838 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
839 Secretary of Labor issued pursuant to section 204 of EO 11246, so that such provisions will be
840 binding upon each subcontractor or vendor. The Contractor will take such action with respect to
841 any subcontract or purchase order as may be directed by the Secretary of Labor as a means of
842 enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in
843 the event the Contractor becomes involved in, or is threatened with, litigation with a
844 subcontractor or vendor as a result of such direction, the Contractor may request that the United
845 States enter into such litigation to protect the interests of the United States.

846 GENERAL OBLIGATION—BENEFITS CONDITIONED UPON PAYMENT

847 22. (a) The obligation of the Contractor to pay the United States as provided in
848 this Contract is a general obligation of the Contractor notwithstanding the manner in which the

849 obligation may be distributed among the Contractor's water users and notwithstanding the
850 default of individual water users in their obligations to the Contractor.

851 (b) The payment of charges becoming due pursuant to this Contract is a condition
852 precedent to receiving benefits under this Contract. The United States shall not make water
853 available to the Contractor through Project facilities during any period in which the Contractor is
854 in arrears in the advance payment of water rates due the United States. The Contractor shall not
855 deliver water under the terms and conditions of this Contract for lands or parties that are in
856 arrears in the advance payment of water rates as levied or established by the Contractor.

857 (c) With respect to subdivision (b) of this Article, the Contractor shall have no
858 obligation to require advance payment for water rates which it levies.

859 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

860 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
861 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
862 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135,
863 Title III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990
864 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and
865 with the applicable implementing regulations and any guidelines imposed by the U.S.
866 Department of the Interior and/or Bureau of Reclamation..

867 (b) These statutes prohibit any person in the United States from being
868 excluded from participation in, being denied the benefits of, or being otherwise subjected to
869 discrimination under any program or activity receiving financial assistance from the Bureau of
870 Reclamation on the grounds of race, color, national origin, disability, or age. By executing this
871 Contract, the Contractor agrees to immediately take any measures necessary to implement this
872 obligation, including permitting officials of the United States to inspect premises, programs, and
873 documents.

874 (c) The Contractor makes this agreement in consideration of and for the
875 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other
876 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of
877 Reclamation, including installment payments after such date on account of arrangements for
878 Federal financial assistance which were approved before such date. The Contractor recognizes
879 and agrees that such Federal assistance will be extended in reliance on the representations and
880 agreements made in this article and that the United States reserves the right to seek judicial
881 enforcement thereof.

882 (d) Complaints of discrimination against the Contractor shall be investigated
883 by the Contracting Officer's Office of Civil Rights.

884 PRIVACY ACT COMPLIANCE

885 24. Omitted.

886 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

887 25. In addition to all other payments to be made by the Contractor pursuant to this
888 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and
889 detailed statement submitted by the Contracting Officer to the Contractor for such specific items
890 of direct cost incurred by the United States for work requested by the Contractor associated with
891 this Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies
892 and procedures. All such amounts referred to in this Article shall not exceed the amount agreed
893 to in writing in advance by the Contractor. This Article shall not apply to costs for routine
894 contract administration.

895 WATER CONSERVATION

896 26. (a) Prior to the delivery of water provided from or conveyed through Federally
897 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be
898 implementing an effective water conservation and efficiency program based on the Contractor's
899 water conservation plan that has been determined by the Contracting Officer to meet the
900 conservation and efficiency criteria for evaluating water conservation plans established under
901 Federal law. The water conservation and efficiency program shall contain definite water
902 conservation objectives, appropriate economically feasible water conservation measures, and
903 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this
904 Contract shall be contingent upon the Contractor's continued implementation of such water
905 conservation program. In the event the Contractor's water conservation plan or any revised water
906 conservation plan completed pursuant to subdivision (d) of Article 26 of this Contract have not
907 yet been determined by the Contracting Officer to meet such criteria, due to circumstances which
908 the Contracting Officer determines are beyond the control of the Contractor, water deliveries

909 shall be made under this Contract so long as the Contractor diligently works with the Contracting
910 Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor
911 immediately begins implementing its water conservation and efficiency program in accordance
912 with the time schedules therein.

913 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
914 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall
915 implement the best management practices identified by the time frames issued by the California
916 Urban Water Conservation Council for such M&I Water unless any such practice is determined
917 by the Contracting Officer to be inappropriate for the Contractor.

918 (c) The Contractor shall submit to the Contracting Officer a report on the
919 status of its implementation of the water conservation plan on the reporting dates specified in the
920 then-existing conservation and efficiency criteria established under Federal law.

921 (d) At five-year intervals, the Contractor shall revise its water conservation
922 plan to reflect the then-current conservation and efficiency criteria for evaluating water
923 conservation plans established under Federal law and submit such revised water management
924 plan to the Contracting Officer for review and evaluation. The Contracting Officer will then
925 determine if the water conservation plan meets Reclamation's then-current conservation and
926 efficiency criteria for evaluating water conservation plans established under Federal law.

927 (e) If the Contractor is engaged in direct groundwater recharge, such activity
928 shall be described in the Contractor's water conservation plan. Such water conservation plan
929 shall demonstrate sufficient lawful uses exist in the Contractor's Service Area so that using a
930 long-term average, the quantity of Delivered Water is demonstrated to be reasonable for such
931 uses and in compliance with Reclamation law.

932 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

933 27. Except as specifically provided in Article 17 of this Contract, the provisions of
934 this Contract shall not be applicable to or affect non-Project Water or water rights now owned or
935 hereafter acquired by the Contractor or any user of such water within the Contractor's Service
936 Area. Any such water shall not be considered Project Water under this Contract. In addition,
937 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or
938 any water user within the Contractor's Service Area acquires or has available under any other
939 contract pursuant to Federal Reclamation law.

940 OPERATION AND MAINTENANCE BY THE OPERATING NON-FEDERAL ENTITY

941 28. Omitted.

942 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

943 29. The expenditure or advance of any money or the performance of any obligation of
944 the United States under this Contract shall be contingent upon appropriation or allotment of
945 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any
946 obligations under this Contract. No liability shall accrue to the United States in case funds are
947 not appropriated or allotted.

948 BOOKS, RECORDS, AND REPORTS

949 30. (a) The Contractor shall establish and maintain accounts and other books and
950 records pertaining to administration of the terms and conditions of this Contract, including the
951 Contractor's financial transactions; water supply data; project operation, maintenance, and
952 replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop
953 census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting
954 Officer may require. Reports shall be furnished to the Contracting Officer in such form and on
955 such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and
956 regulations, each party to this Contract shall have the right during office hours to examine and
957 make copies of the other party's books and records relating to matters covered by this Contract.

958 (b) Notwithstanding the provisions of subdivision (a) of this Article, no
959 books, records, or other information shall be requested from the Contractor by the Contracting
960 Officer unless such books, records, or information are reasonably related to the administration or

961 performance of this Contract. Any such request shall allow the Contractor a reasonable period of
962 time within which to provide the requested books, records, or information.

963 (c) Omitted.

964 ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED

965 31. (a) The provisions of this Contract shall apply to and bind the successors and
966 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
967 therein by either party shall be valid until approved in writing by the other party.

968 (b) The assignment of any right or interest in this Contract by either party shall
969 not interfere with the rights or obligations of the other party to this Contract absent the written
970 concurrence of said other party.

971 (c) The Contracting Officer shall not unreasonably condition or withhold
972 approval of any proposed assignment.

973 SEVERABILITY

974 32. In the event that a person or entity who is neither (i) a party to a Project contract,
975 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor
976 (iii) an association or other form of organization whose primary function is to represent parties to
977 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or
978 enforceability of a provision included in this Contract and said person, entity, association, or
979 organization obtains a final court decision holding that such provision is legally invalid or
980 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),
981 the parties to this Contract shall use their best efforts to (i) within thirty days of the date of such
982 final court decision identify by mutual agreement the provisions in this Contract which must be
983 revised and (ii) within three months thereafter promptly agree on the appropriate revision(s). The
984 time periods specified above may be extended by mutual agreement of the parties. Pending the

985 completion of the actions designated above, to the extent it can do so without violating any
986 applicable provisions of law, the United States shall continue to make the quantities of Project
987 Water specified in this Contract available to the Contractor pursuant to the provisions of this
988 Contract which were not found to be legally invalid or unenforceable in the final court decision.

989 RESOLUTION OF DISPUTES

990 33. Should any dispute arise concerning any provisions of this Contract, or the
991 parties' rights and obligations there under, the parties shall meet and confer in an attempt to
992 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting
993 Officer referring any matter to Department of Justice, the party shall provide to the other party 30
994 days' written notice of the intent to take such action; *Provided*, That such notice shall not be
995 required where a delay in commencing an action would prejudice the interests of the party that
996 intends to file suit. During the 30-day notice period, the Contractor and the Contracting Officer
997 shall meet and confer in an attempt to resolve the dispute. Except as specifically provided,
998 nothing herein is intended to waive or abridge any right or remedy that the Contractor or the
999 United States may have.

1000 OFFICIALS NOT TO BENEFIT

1001 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1002 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1003 manner as other water users or landowners.

1004 CHANGES IN CONTRACTOR'S ORGANIZATION

1005 35. (a) While this Contract is in effect, no change may be made in the
1006 Contractor's organization, by inclusion or exclusion of lands or by any other changes which may
1007 affect the respective rights, obligations, privileges, and duties of either the United States or the
1008 Contractor under this Contract including, but not limited to, dissolution, consolidation, or
1009 merger, except upon the Contracting Officer's written consent..

1010 (b) Within 30 days of receipt of a request for such a change, the Contracting
1011 Officer will notify the Contractor of any additional information required by the Contracting
1012 Officer for processing said request, and both parties will meet to establish a mutually agreeable
1013 schedule for timely completion of the process. Such process will analyze whether the proposed
1014 change is likely to: (i) result in the use of Project Water contrary to the terms of this Contract;
1015 (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or
1016 to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii)
1017 have an impact on any Project Water rights applications, permits, or licenses. In addition, the
1018 Contracting Officer shall comply with the NEPA and the ESA. The Contractor will be
1019 responsible for all costs incurred by the Contracting Officer in this process, and such costs will
1020 be paid in accordance with Article 25 of this Contract.

1021 FEDERAL LAWS

1022 36. By entering into this Contract, the Contractor does not waive its rights to contest
1023 the validity or application in connection with the performance of the terms and conditions of this
1024 Contract of any Federal law or regulation; *Provided*, That the Contractor agrees to comply with
1025 the terms and conditions of this Contract unless and until relief from application of such Federal
1026 law or regulation to the implementing provision of the Contract is granted by a court of
1027 competent jurisdiction.

1028 NOTICES

1029 37. Any notice, demand, or request authorized or required by this Contract shall be
1030 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
1031 delivered to the Area Manager, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom,
1032 California 95630-1799, and on behalf of the United States, when mailed, postage prepaid, or
1033 delivered to the Board of Directors of the Sacramento Municipal Utility District, P.O. Box 15830,
1034 MS B406, Sacramento, CA 95852-1830. The designation of the addressee or the address may
1035 be changed by notice given in the same manner as provided in this Article for other notices.

1036 CONFIRMATION OF CONTRACT

1037 38. Promptly after the execution of this Contract, the Contractor shall provide
1038 evidence to the Contracting Officer that, pursuant to the laws of the State of California, the
1039 Contractor is a legally constituted entity and the Contract is lawful, valid, and binding on the
1040 Contractor. This Contract shall not be binding on the United States until such evidence has been
1041 provided to the Contracting Officer's satisfaction.

1042 SUBCONTRACT FOR RESALE OF WATER

1043 39. Omitted

1044 MEDIUM FOR TRANSMITTING PAYMENTS

1045 40. (a) All payments from the Contractor to the United States under this Contract
1046 shall be by the medium requested by the United States on or before the date payment is due. The
1047 required method of payment may include checks, wire transfers, or other types of payment
1048 specified by the United States.

1049 (b) Upon execution of the Contract, the Contractor shall furnish the
1050 Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose
1051 for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising
1052 out of the Contractor's relationship with the United States.

1053 CONTRACT DRAFTING CONSIDERATIONS

1054 41. This Contract has been, negotiated and reviewed by the parties hereto, each of
1055 whom is sophisticated in the matters to which this Contract pertains. The double spaced Articles
1056 of this Contract have been drafted, negotiated, and reviewed by the parties, and no one party shall
1057 be considered to have drafted the stated articles.

1058

EXHIBIT A

[Map of Contractor's Service Area]

Draft

EXHIBIT B
[Rates and Charges]

Draft